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ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY Petition for declaration of service currently provided under Rate 6L to 3 MW and greater customers as a competitive service pursuant to Section 16-113 of the Public Utilities Act and approval of related tariff amendments	)	DOCKET NO. 02-0479

DIRECT TESTIMONY

AND ACCOMPANYING ATTACHMENTS

OF

DR. DALE E. SWAN

ON BEHALF OF

THE

UNITED STATES DEPARTMENT OF ENERGY

AUGUST 30, 2002

EXETER
Associates, Inc.
12510 Prosperity Drive
Suite 350
Silver Spring, Maryland 20904

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STATE OF ILLINOIS

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DIRECT TESTIMONY

OF

DR. DALE E. SWAN

I. INTRODUCTION AND SUMMARY

Q. PLEASE STATE YOUR NAME, OCCUPATION AND ADDRESS.

A. My name is Dale E. Swan. I am a senior economist and principal with Exeter Associates, Inc. Our offices are located at 12510 Prosperity Drive, Silver Spring, Maryland 20904.

Q. DR. SWAN, PLEASE SUMMARIZE YOUR PROFESSIONAL QUALIFICATIONS.

A. I hold a B.S. degree in Business Administration from Ithaca College. I attended a master's program in economics at Tufts University, and I hold a Ph.D. in economics from the University of North Carolina at Chapel Hill. Prior to my consulting work, I served as

Assistant and Associate Professor on the economics faculties of several colleges and universities. I also served as staff economist with the Federal Energy Administration and with the Arabian American Oil Company. For the last 25years, I have consulted on matters primarily related to the electric utility industry, the last 21years with Exeter. Much of my work over the last two decades has concentrated in the areas of long-term electric power supply planning and contract negotiations for large power users, and on electric utility cost allocation and rate design. For much of this period, I have directed Exeter's utility support services projects with the United States Department of Energy (DOE). As part of this work, I have been responsible for technical supervision of Exeter's participation in DOE interventions in numerous rate cases, for the financial and locational assessment of transmission and generation projects, and for the negotiation of technical aspects of power supply and facilities contracts. In the last several years, my activities have also focused on the process of electric industry restructuring.

A complete copy of my resume is provided as an attachment to my testimony.

Q. HAVE YOU TESTIFIED IN OTHER REGULATORY PROCEEDINGS?

A. Yes. I have testified on a variety of topics relating to electric utilities in 50 proceedings before federal and state regulatory commissions. A complete list of the cases in which I have testified is provided as part of my resume.

Q. DR. SWAN, WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. I have been asked by the U.S. Department of Energy (DOE) to address the reasonableness of Commonwealth Edison Company's (the Company or ComEd) petition to the Illinois Commerce Commission (ICC or the Commission) for a declaration that 6L service to customers with loads of 3 megawatts (MW) or higher is competitive, and to assess the impact of the Company's petition on DOE installations as well as on other affected Federal Executive Agency (FEA) facilities.

Q. WHAT DOE AND OTHER FEDERAL FACILITIES ARE AFFECTED BY THE COMPANY'S PETITION?

A. Two large DOE laboratories will be affected – the Argonne National Laboratory (Argonne) and the Fermi National Accelerator Center (Fermi). In addition, the Company's proposal will also directly affect the U.S. Navy's Great Lakes Naval Training Center (Great Lakes), two General Services Administration office buildings in Chicago, certain Veterans Administration hospitals and Federal Aviation Administration facilities at O'Hare and Midway airports. Combined, these facilities use over 900,000 megawatt hours (mWh) of energy annually.

Q. PLEASE SUMMARIZE THE TESTIMONY YOU WILL PROVIDE.

A. In Section II, I summarize my understanding of the nature of this case and the issues that must be addressed to facilitate the Commission's decision. In Section III, I address the question whether there currently exists a comparably priced service in the market that is reasonably equivalent to Rate 6L bundled service currently provided by ComEd. I conclude that there is no reasonably equivalent service currently available at a comparable price, and question whether any such reasonably equivalent product will be forthcoming at a comparable price as long as the CTC determination continues under the existing algorithm. In Section IV, I testify that the Company's characterization of the competitive market as robust is misleading and I identify a number of factors that can lead one to the opposite conclusion. In Section V, I provide for the Commission a history of the Federal Government's unsuccessful attempts to procure electric power supplies from alternative sellers since October of 1999, leading federal agencies to question whether there is adequate competition in the ComEd region to warrant the competitive declaration requested by the Company. In Section VI, I examine the factors that will affect the extent of competition for large 6L loads in the future and conclude that these factors militate toward a reduction, not an increase, in the amount of competition for these loads. In Section VII, I point out a particularly inequitable aspect of the Company's proposal regarding affected customers that have contracts that extend beyond June 1, 2003, and suggest a way to treat these customers fairly if the Commission decides to act favorably on the Company's petition. Finally, in Section VIII, I provide my conclusions and recommendation.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS AND RECOMMENDATION.

A. After reviewing the Company's filing; considering the experience of the Federal Government and other large customers in trying to obtain competitively priced power and energy from alternate suppliers; accounting for the financial and other factors likely to adversely affect the number of competitive suppliers in the ComEd territory; and considering the importance of the affected customers in the regional economy; I conclude that there can be no worse time for the Commission to declare that Rate 6L service for customers with loads of 3 MW or more is competitive. I believe there is no potential advantage to the customers of ComEd and the State of Illinois for the Commission to accept the Company's petition at this time, while I believe there are potential serious adverse consequences that could result from that action. Specifically, I anticipate that the primary response will be a wholesale return to Rate 6L bundled service through 2006 by those customers who will have that ability. For those customers unable to do that, there could be significant increases in power costs and consequent adverse economic impacts on those companies. Based on these concerns, I urge the Commission to reject the Company's petition.

II. THE ISSUES IN THIS CASE

Q. WHAT IS YOUR UNDERSTANDING OF THE ISSUES IN THIS CASE?

A. It is my understanding that, in Section 16-103 of the Electric Service Customer Choice and Rate Relief Law of 1997 (the Act), the Illinois Legislature requires the utility to continue to offer to retail customers each tariffed service that it offered on the effective date of the Act "...until the service is ...declared competitive pursuant to Section 16-113..." Section 16-113 provides that "...the Commission shall declare a service to be a competitive service for some identifiable customer segment or group of customers...if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group...at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers..."

My understanding of the Company's petition is that it requests the Commission to declare as competitive some or all of the bundled 6L service currently provided to customers with loads of 3 MW or more. As part of its petition, ComEd proposes that it would cease to offer some or all of the 6L service to this group of customers effective June 1, 2003, except that it would grandfather 6L service for three years, until June 1, 2006, for any such customer who is taking 6L service on June 1, 2003, and continues to take that service. The 6L rate would not be available to any new customer after June 1, 2003 with a load of 3 MW or more, and any customer who would leave 6L service after

June 1, 2003, would not be allowed to return. Instead, customers would have available to them the tariffed Rate HEP (Hourly Energy Pricing) if they preferred not to take Rate RCDS (Retail Customer Delivery Service), and either contract with a Retail Electric Supplier (RES) for power and energy or take Purchase Power Option (PPO) service from ComEd if it is available.

Q. WHAT IS YOUR UNDERSTANDING OF THE ALTERNATIVE RESPONSES AVAILABLE TO THE COMMISSION?

A. It is my understanding that the Commission has three alternative responses. First, it can deny the Company's petition, in which case the Company can refile its petition after 6 months. Second, the Commission can issue an order accepting the Company's petition, which will deem "competitive" 6L service to customers with loads of 3 MW or greater. What is unclear to me is whether that incorporates all of 6L service or just the provision of power and energy under Rate 6L. In any event, the Commission's order will presumably trigger the withdrawal of certain Provider of Last Resort (POLR) services to customers with loads of 3 MW or higher. Finally, it is my understanding that the Commission can choose not to act affirmatively, in which case the provision of all or some portion of the services provided under Rate 6L to these large customers will be deemed competitive 120 days following the date of the Company's petition. If this last approach is taken, it is my understanding that the Commission can later reconsider the appropriateness of the competitive status of this service on its own motion.

Q. WHAT IS YOUR UNDERSTANDING OF THE CRITERIA THAT THE COMMISSION MUST CONSIDER IN DETERMINING WHETHER OR NOT TO DEEM COMPETITIVE 6L SERVICE TO LARGE CUSTOMERS?

A. The Act states that there must be "reasonably available" a "reasonably equivalent substitute service" at a "comparable price". From an economist's perspective, this requires that the service or services in question that the Company wishes to be deemed "competitive" be well defined. Then, it must be shown that this service or these services currently provided by the Company under tariff Rate 6L, or some reasonably equivalent substitutes for these services, are **currently** available from other suppliers in the competitive market at comparable prices. While "comparable price" does not necessarily mean an equal price, the price at which such a service or reasonably equivalent service can be provided cannot be so much higher as to make the purchase of such a service from an alternative supplier uneconomic for the buyer.

III. THE LACK OF A CLOSE SUBSTITUTE AT A COMPARABLE PRICE

Q. WHAT EVIDENCE DOES THE COMPANY PROVIDE TO DEMONSTRATE THAT THERE CURRENTLY EXIST COMPETITORS WHO CAN PROVIDE THE SAME OR A REASONABLY EQUIVALENT SUBSTITUTE SERVICE AS RATE 6L?

A. The Company essentially offers evidence of switching to RES supplied power and energy as *prima facie* evidence that there are reasonably equivalent services available from non-affiliated suppliers at comparable prices. This argument is made by Messrs. Crumrine and Kelter:

> The very fact that significant numbers of customers in the 3 MW or greater segment have chosen to take RES-supplied electric power and energy confirms the competitiveness of the alternative offerings already available to these customers. That fact also confirms that the combination of unbundled delivery services and RES-supplied power and energy is reasonably equivalent to bundled service under Rate 6L. (Page 5, lines 77-82)

Q. DOES THE FACT THAT A NUMBER OF 3MW AND HIGHER 6L CUSTOMERS HAVE SWITCHED TO A RES AT ONE TIME OR ANOTHER DEMONSTRATE THAT THERE IS AVAILABLE A REASONABLY EQUIVALENT SUBSTITUTE FOR 6L SERVICE AT A COMPARABLE PRICE?

A. No. Messrs. Crumrine and Kelter make the assumption that the 6L service in question is simply the provision of power and energy. That is not correct. While legitimate questions may be raised about the competitiveness of the market for power and energy in the ComEd service area, which I shall address shortly, a demonstration of large numbers of suppliers of power and energy is not dispositive of the issue. That is because the provision of bundled 6L tariffed service to these customers is a combination of many services. Most important is the fact that bundled 6L tariffed service provides a long-term, fixed price hedging instrument for the group of customers in question. This very point is made by the Company's own witnesses. Ms. Juracek refers to Rate 6L as a "fixed price call option." (Page 11, line 200.) Messrs. Crumrine and Kelter refer to fixed price, bundled service offerings like Rate 6L as "a sort of institutionalized insurance policy". (Page 19, lines 365-367.) Dr. McDermott refers to 6L as capable of being used as "fixed price options" (Page 4, line 83), and Dr. Landon spends considerable time in his testimony explaining that 6L service provides a costless call option(Page 18, lines 383,384), and that Rate 6L "shields large customers...from price risks in the market place." (Page 24, lines 512-513). It is clear that the provision of bundled, tariffed 6L service to these large customers offers considerably more than power and energy.

Q. DO YOU AGREE WITH THE COMPANY'S CHARACTERIZATION THAT THE 6L CALL OPTION IS "FREE?"

A. The 6L rate is based on cost of service, including the cost of maintaining the capacity to serve loads. Thus, I do not understand the Company's characterization.

Q. ARE THERE CLOSE SUBSTITUTES FOR RATE 6L AS A LONG-TERM, FIXED-PRICE HEDGING INSTRUMENT?

A. I do not believe so. I know for a fact that the Federal Government has been unable to purchase such a commodity from alternate suppliers in several attempts since October 1999. My conversations with those who represent other customers in the 3 MW and higher group indicate that those customers have had similar experiences.

Q. WHY ARE RESs UNWILLING OR UNABLE TO PROVIDE THIS TYPE OF HEDGING PRODUCT?

A. I believe the reason lies primarily with the way in which the Customer Transition Charges (CTC) are determined. One can purchase a product from a RES that fixes a price for power and energy over a multiple year period. However, customers seem unable to get a bid from a RES that guarantees a total, net fixed price for the customer over a multiple year period. That is because a RES can hedge against the market price, but is unable or unwilling to hedge against variations in the CTC, which are a direct result of ComEd's determination of its Market Value Energy Charges (MVECs). These variations can be very large, as is evidenced by the extremely large increase in CTC that became effective in May of 2002. Had a RES contracted at a firm, fixed, net price (including CTC), its cost of supplying a customer during this current period A would be extremely high. While it may be possible to entice a RES to offer such a product with a very high price, the provision of such a product would violate the "comparable price" criterion that is set forth in Section 16-113 of the Act.

Q. DOES THE COMPANY APPEAR TO RECOGNIZE THIS PROBLEM?

A. It certainly recognizes that the existence of Rate 6L has prevented the development of this type of product by RESs. Ms. Juracek states at page 11, lines 207-209, that, "Rate 6L is an overly protective offering that in effect discourages customers and suppliers from proactively hedging supplies through the market." Dr. McDermott states that, "Such regulatory policies [the continued provision of tariff services that can be used as fixed price options] make it difficult for firms to provide these services on a competitive basis." (Page 4, lines 84-85) Dr. Landon states at page 18, lines 387-388, that, "It [6L service] also discourages other suppliers that would otherwise provide or utilize alternative means of hedging." And, at page 19, lines 396 -398, he goes on to say that, "The current Rate 6L option retards the development of these alternatives and thereby makes it difficult to make a direct and straightforward comparison between utility services and those that will be supplied by RESs."

Q. DOES THE COMPANY SUGGEST THAT THESE PRODUCTS WILL DEVELOP WITH THE ELIMINATION OF RATE 6L AS A POLR SERVICE?

A. Yes. These same witnesses state that the market will provide substitute hedging instruments as soon as 6L is withdrawn. In fact, Dr. Landon seems to believe that these products are already being offered by RESs. (See page 16, lines 336 -339.)

Q. DO YOU AGREE?

A. No. What these witnesses seem to have in mind is a multi-year, firm, fixed price product for power and energy that will be provided by the RESs. I agree that a multi-year, fixed-price power and energy product is already being offered by some suppliers. What is not being offered is the full hedge that is provided to a customer by Rate 6L. That is, Rate 6L offers the customer a firm, fixed price for the total bundled service throughout the transition period. A firm fixed price offer by a RES for power and energy still leaves unhedged the CTC and delivery services charges. Some customers entered into such limited hedging agreements with RESs over a year ago and now are experiencing very high supply costs because the Company's CTC have increased so dramatically. I submit that no RES will offer a fully hedged product as long as the Company continues to calculate the CTC as they are currently calculated. Without certainty in the CTC, it is unlikely that the market will provide the fully hedged product that Rate 6L now provides to customers with loads of 3 MW or higher.

Q. DO THESE LARGE CUSTOMERS NEED THIS KIND OF HEDGE?

A. I know for certain that the U.S. Government has a strong aversion to risk and generally will seek firm, fixed price arrangements. There may be some large private sector customers that are willing to take on the type of risk that the market exposes one to, but my experience suggests that these are the exceptions rather than the rule. My experience suggests that private industry is in the business of making steel, or aluminum or glass or some other product or service, and would generally prefer to gain certainty in the future prices that it will need to pay for critical inputs to its production process, so that it can concentrate on the business that it is in.

IV. <u>THE ROBUSTNESS OF CURRENT COMPETITION</u>

Q. DOES THE COMPANY ARGUE THAT THERE CURRENTLY EXISTS SIGNIFICANT COMPETITION IN THE PROVISION OF POWER AND ENERGY?

A. The Company seems to make two arguments. The first is that there does exist significant competition for power and energy and that fact demonstrates that Rate 6L is not required. On the other hand, the Company also seems to argue that the existence of 6L prevents the development of competition, and so the Commission should declare 6L competitive, which will foster the development of the market. In short, the Company seems to want it both ways. Either there already exists significant competition despite the existence of 6L, or there is very little competition because of the existence of 6L. In the first instance, the Commission should consider whether there are advantages bestowed on customers and the State of Illinois by the availability of 6L as a POLR service, since the existence of the rate has not hampered the delivery of power and energy by RESs, according to the Company's own case. In the second instance, if there is little competition because of the availability of 6L, then it would appear that the Company's case for the availability of many suppliers with a reasonably equivalent service is weakened.

Q. DO YOU BELIEVE THAT THERE IS A ROBUST MARKET FOR THE PROVISION OF POWER AND ENERGY TO LARGE 6L CUSTOMERS?

A. I believe one has to be very careful about using the available switching data as a basis for demonstrating the existence of robust competition. The Company points to the fact that 117, or 31 percent, of the 373 6L customers with loads of 3 MW or higher are currently taking service from an unaffiliated RES as confirmation of "...the competitiveness of the alternative offerings already available to these customers." (Crumrine and Kelter Direct Testimony, page 5, lines 77 - 80.) However, there are a number of circumstances that operate to qualify the importance of that number. First, I suspect there are a number of customers who are locked into contracts with alternate suppliers that have resulted in rates higher than the Company's PPO and, in some instances, higher than they would be paying under 6L. If that is true, then a large number of those customers would likely prefer to get off of RES service if they could. Second, Exelon's Market Development Program appears to provide to RESs an incentive to lower the price they would otherwise offer to customers. That kind of artificial fillip provides an inflated view of the extent to which large 6L customers are being served by independent, competitive alternative suppliers.

A third factor has to do with the effect that the availability of Rate 6L and the PPO has on the offers provided by RESs. That is, the prices that are offered by RESs must be able to compete with the effective prices available under Rate 6L and the PPO. The fact that RESs have offered service in the past with prices that low is, in part, due to the fact that they had a price to beat. The question that the Commission has to answer is whether there will be a sufficient number of independent competitors to impose that same discipline on each other. That is, will there be sufficient competition to result in similar prices to those obtained when 6L is available? I think a strong case can be made that, with the elimination of 6L, the prices offered by RESs will be significantly higher.

Finally, I cannot help but wonder why the Federal Government, about which I have first hand knowledge, has been so unsuccessful in obtaining bids that can compete with the Company's offerings if the market is as robust as the Company's petition and its witnesses would lead one to think.

V. THE FEDERAL GOVERNMENT STORY – A SINGULAR LACK OF SUCCESS

Q. WHAT AGENCIES HAVE UNDERTAKEN COMPETITIVE ELECTRIC POWER PROCUREMENT IN THE ComEd SERVICE AREA ON BEHALF OF THE FEDERAL GOVERNMENT?

A. Two agencies have undertaken procurement actions on behalf of th Federal Government in the ComEd service area: the Defense Energy Supply Center (DESC) and the General Services Administration (GSA). DESC has directed four competitive solicitations in the

ComEd service area since October 1999. GSA has undertaken two competitive solicitations in the ComEd service territory during the same period.

Q. WHAT HAS RESULTED FROM THESE SIX COMPETITIVE SOLICITATIONS?

A. Neither DESC nor GSA has been able to make an award to any bidder as a result of these six competitive solicitations. DESC's unsuccessful experience is attested to in the Declaration of Mr. Larry Fratis, a Contracting Officer with DESC, which Declaration is provided as DOE Exhibit 2 attached to my testimony.

Q. WHAT IS YOUR DIRECT KNOWLEDGE OF DESC'S PROCUREMENT EXPERIENCE IN THE ComEd SERVICE AREA?

A. My firm, Exeter Associates, has assisted DESC in each of these four competitive solicitations. In addition, I have participated in each of those procurement processes as a consultant to DOE, whose two laboratories, Fermi and Argonne, represented two of the largest loads offered as part of the four DESC Requests for Proposals (RFPs).

Q. HAS DESC HAD MUCH SUCCESS IN OTHER JURISDICTIONS IN COMPETITIVELY PROCURING POWER AND ENERGY FOR FEDERAL GOVERNMENT INSTALLATIONS?

A. Yes. DESC has conducted competitive procurements in several other states which have led to awards for the provision of power and energy. For example, awards have been made for federal facilities in California, Pennsylvania, New Jersey, Maryland, Maine, Texas, and the District of Columbia.

Q. TO YOUR KNOWLEDGE, WAS POLR SERVICE OFFERED TO THE FEDERAL GOVERNMENT CUSTOMERS IN THOSE STATES?

A. To my knowledge, some form of POLR or Standard Offer service is available in each of the jurisdictions in which those DESC awards were made.

Q. PLEASE DESCRIBE THE FOUR SOLICITATIONS CONDUCTED BY DESC AND THE RESULTS OF THOSE FOUR COMPETITIVE PROCUREMENT ACTIONS.

A. The first RFP was issued in June 1999 for delivery effective October 1999. It requested bids for delivery to Fermi, Argonne, and the Great Lakes Naval Training Center in the ComEd service area, in addition to loads in other service areas. The bidders could choose to bid on any one or all of the specified loads. A one-year, fixed price, indefinite quantity was solicited. The RFP was sent to each ICC certified ARES and was advertised in trade journals. DESC received one bid for the DOE laboratories and the Great Lakes Naval Training Center. While that bid was below the cost of 6L service it was found to be more expensive than ComEd's PPO/NFF option. No bid was awarded.

The second RFP was issued in 2000. It, too, requested requirements, firm fixed price, indefinite quantity service for the DOE laboratories, Great Lakes and three V.A. hospitals. Bids were received from three marketers, only two of which had been certified by the ICC. No awards were made because no offeror was able to provide overall savings compared to either ComEd's PPO or its Rate 6L.

The third RFP was issued in 2001, and it covered the two DOE laboratories, Great Lakes and one of the Veterans Administration hospitals. No offers were received, and each of these facilities continued to take service from the local utility, including ComEd. The two DOE laboratories took service under Rater 6L. The Navy's Great Lakes facility took service from ComEd under a special discount from the 6L rate.

The fourth attempt to solicit competitive power supply was made in 2002 for the two DOE laboratories, the V.A. hospital and Great Lakes. Again, firm, fixed-price, requirements service was solicited. Only one RES submitted a bid out of the 21 power marketers that were provided with solicitation notifications. The offer was unable to beat either the cost of ComEd's PPO service or the cost of its 6L service. No award was made. Great Lakes remains on its special contract with ComEd for a discount off of Rate 6L, and the two DOE Labs are currently taking PPO service.

In short, DESC has received bids from only four certified suppliers in four attempts since June of 1999. Only one of those bids beat 6 L service, and not one of the bids has been at a price lower than ComEd's PPO service. That experience, especially when contrasted to the successes DESC has had in other states, does not suggest a robust competitive market for electric power and energy in the ComEd service territory.

Q. PLEASE DESCRIBE THE GSA EXPERIENCE.

A. GSA has issued two RFPs since 1999. The first was in 1999 for service to begin in October. It was a statewide solicitation with 153,000 mWh of load available in the ComEd service territory. No bids were received. The second RFP was issued in March 2001. It covered the loads of two GSA Chicago buildings, three VA hospitals, and two FAA facilities in the ComEd service area, all with loads exceeding 3 MW, in addition to some smaller loads. A total of 156,000 mWh were available for bid. Again, no bids were received despite extensive pre-bid notification and discussions with several alternative suppliers.

After the 2001 solicitation was closed, Exelon approached GSA with a proposal, which GSA decided to accept. Essentially, this arrangement provides power and energy to six of the seven facilities with loads of 3 MW or greater in the ComEd area that were included in the RFP at a firm fixed price that yielded a small percentage savings off the PPO cost, based on the MVEC at the time. GSA executed a contract for 44 months. With the dramatic increase in CTC in May of 2002, that contract now results in costs that exceed both the PPO and Rate 6L, despite Exelon providing a 5 mill reduction off the agreed upon price.

Q. HOW DO YOU SUMMARIZE THE U.S. GOVERNMENT'S EXPERIENCE IN PROCURING COMPETITIVE POWER IN THE ComEd SERVICE AREA SINCE RETAIL ACCESS BEGAN IN OCTOBER OF 1999?

A. The Government has been singularly unsuccessful in six attempts to procure competitive power through the bidding process. In total, four qualified bids have been received in response to six RFPs, and none of those bids yielded benefits to the Government compared to its options with ComEd. Thus, these six solicitations resulted in no awards. The only success in replacing ComEd was as a result of an unsolicited proposal by ComEd's affiliate, Exelon, and that deal has resulted in several federal facilities currently experiencing costs that exceed the cost of power and energy under either ComEd's PPO rider or Rate 6L.

Q. WHAT DO YOU CONCLUDE REGARDING THIS UNSUCCESSFUL FEDERAL GOVERNMENT EXPERIENCE?

A. The Federal Government's experience is not consistent with the Company's suggestion that there is a robust market for power and energy for large 6L customers in the ComEd service territory.

VI. <u>THE FUTURE COMPETITIVENESS OF THE ComEd MARKET</u>

Q. WHAT POSITION DOES THE COMPANY TAKE REGARDING THE EXTENT OF FUTURE COMPETITION FOR THE LOADS OF LARGE 6L CUSTOMERS IN THE ComEd SERVICE TERRITORY?

A. The Company alleges that the amount of competition for large 6L customer loads will grow as a result of eliminating the availability of tariffed 6L service. It appears that the Company believes this increased competition will take the form of new products being made available (fixed price hedging instruments, in particular) and an increased number of sellers of power and energy entering the market. I have already addressed my concern over the inability of alternative suppliers to offer fully hedged multi-year fixed price deals as long as the CTC continues to be determined in the same manner as at present. The Company's expectation of new entrants into the power and energy market is expressed by several of its witnesses. The most explicit is Dr. Landon. At page 25, lines 519 - 521 he explains that the existence of Rate 6L "...reduces the incentives for market entry and removes potentially competitive resources from the market. These effects retard market development." At page 26, lines 542 - 544 he argues that by eliminating 6L service for large customers, "...the Commission can assure present and prospective RESs, marketers, traders and generators that there will be a growing competitive market for their products and services." Ms. Juracek goes so far as to suggest that providing this fillip to competition in the ComEd territory can "jump-start" competition in the southern part of the state. (See page 13, lines 248 - 251.)

Q. DO YOU AGREE WITH THE COMPANY'S ARGUMENT THAT THERE IS LIKELY TO DEVELOP INCREASED COMPETITION IN THE FUTURE, ESPECIALLY IF RATE 6L POLR SERVICE IS ELIMINATED?

A. No. It is certainly true that elimination of Rate 6L POLR service will probably force more customers to purchase power from a RES, although I suspect that effect will not be realized until after June 1, 2006. Between June 1, 2003 and June 1, 2006, I actually anticipate a wholesale return to Rate 6L by all customers who have the ability to do so under the Company's proposal. But, even after final elimination of 6L POLR service, when large 6L customers may be forced to contract with RESs because of limited choices with ComEd, that does not necessarily mean that there will be the supply response that is suggested by ComEd. There will be increased purchases from RESs, but the critical question is whether the number of suppliers competing for these loads will increase, or even remain at the current level.

Q. YOU MENTIONED EARLIER THAT THERE ARE FACTORS OPERATING THAT MAY REDUCE RATHER THAN INCREASE THE NUMBER OF SUPPLIERS COMPETING FOR THESE LOADS. PLEASE EXPLAIN WHAT THESE FACTORS ARE.

A. There are two developments that I find particularly troublesome. The first is the recent decision (No. 5-01-0416) of the Fifth District Appellate Court of Illinois (Docket No. 00-199) that reverses a decision of the ICC regarding the reciprocity requirements set forth in Section 16-115(d)(5) of the Electric Service Customer Choice and Rate Relief Law of 1997. My layman's reading of this decision is that the reciprocity standards for ICC certification as a RES are significantly tightened. If my reading is correct, this would increase the uncertainty regarding the number of current suppliers that the Commission will be able to certificate in the future.

The second development is the overall financial deterioration among power marketers and brokers generally, including some of the suppliers that are currently certificated by the Commission. There is considerable uncertainty regarding which of today's power marketers will still be in the business tomorrow. A number of firms have already eliminated their marketing activities, and others may be contemplating similar actions. Too many of these firms have serious financial difficulties. These developments will affect the number of suppliers in the ComEd service territory in two ways. First, buyers generally have minimum credit worthiness requirements in order to enter into contracts with suppliers. The existing and growing financial problems that plague many power marketers may significantly reduce the number of suppliers with which customers can do business, assuming the suppliers are able to get certification by the Commission. Second, the shrinking number of power marketers nationwide can only have the effect of reducing the number of available suppliers that can enter the ComEd market over the next few years in response to the demand side fillip that the Company is so eager to provide.

Q. WHAT IS THE IMPLICATION OF THESE OBSERVATIONS?

A. The net effect of these factors could well be a growing demand for RES-supplied power and energy with a shrinking number of such suppliers serving these customers. This set of circumstances can hardly qualify as robust competition. In the face of a potential reduction in the number of competitive suppliers, it seems to me that the prudent course of action for the Commission is to deny at this time the Company's request to declare as competitive 6L service for customers with loads of 3 MW or greater.

VII. EQUITY FOR CUSTOMERS WITH EXISTING CONTRACTS

Q. IN YOUR INTRODUCTION YOU MENTIONED THAT THE COMPANY'S PROPOSAL IS PARTICULARLY INEQUITABLE FOR CUSTOMERS WITH EXISTING CONTRACTS THAT EXTEND BEYOND JUNE 1, 2003. WOULD YOU PLEASE ELABORATE ON THIS INEQUITY?

A. I understand that there are a number of customers that have current contracts that expire after June 1, 2003. If these contracts impose costs on the customers for early termination (e.g., take-or-pay penalties) then they will be effectively preempted from returning to

Rate 6L during the grandfather period under the Company's proposal, since they will not be taking service under 6L on June 1, 2003. This is patently unfair to these customers because they entered into these contracts based on the reasonable expectation that they could return to 6L at a later time. The Company's proposal essentially changes the rules after commitments have been made. I believe this treats such customers inequitably.

Q. CAN THESE CUSTOMERS SIMPLY RETURN TO PPO SERVICE WHEN THEIR CONTRACTS EXPIRE?

A. That remains to be seen. If they do not have positive CTC, then they will be foreclosed from taking PPO service as well. In that circumstance, their only options will be to take HEP service or contract with a RES. In short, the protection afforded by both the PPO and Rate 6L will be denied these customers, simply because they happen to have entered into contracts, some with ComEd, that have terms that extend beyond June 1, 2003.

Q. DO ANY OF THE FEDERAL FACILITIES FALL INTO THIS CATEGORY?

A. Yes. The GSA contract with Exelon runs through December of 2005. At that time, the federal facilities served under that agreement may be able to take whatever PPO service is being made available if they have positive CTC. Otherwise they will be forced into the market either through the HEP rate or through service from a RES.

Q. IS THERE A WAY TO REMEDY THIS INEQUITY IF THE COMMISSION DECIDES TO ACCEPT THE COMPANY'S PETITION AND ORDERS RATE 6L SERVICE TO BE COMPETITIVE FOR LARGE CUSTOMERS?

A. Yes. If the Commission decides to act favorably on the Company's petition, it seems to me that it could mitigate the potential impacts on customers with existing contracts by permitting those customers to have a one-time opportunity to move back to 6L service upon the expiration date of their contracts. I believe this could be implemented fairly simply by having each such customer notify the Company and the Commission that it has such a contract and what is the expiration date of that contract. Then, the customer could opt to return to Rate 6L on that date. If it chooses to take service under some other rate schedule, including RCDS, then the customer would forfeit any right to move back to Rate 6L for the remainder of the grandfathered period. This would have the effect of treating customers with existing contracts that expire after June 1, 2003 on the same footing as all other 6L customers with loads of 3 MW or greater.

VIII. CONCLUSIONS AND RECOMMENDATION

Q. WHAT CONCLUSIONS HAVE YOUR REACHED AS A RESULT OF YOUR ANALYSIS OF THE CONDITIONS NECESSARY FOR A DECLARATION BY THE COMMISSION THAT RATE 6L FOR CUSTOMERS WITH LOADS OF 3 MW OR GREATER IS COMPETITIVE?

A. My review of the state of the market in the ComEd service area leads me to the following conclusions:

1. The Company has not demonstrated that there currently exists a reasonably equivalent substitute service for Rate 6L at a comparable price. In particular, no fully hedged, firm fixed price product is presently offered by any of the non-affiliated suppliers in the market, and it is unlikely that any such product will be provided as long as CTC continue to be determined using the current algorithm.

2. The switching data provided by the Company are not sufficient evidence that there currently is robust competition for power and energy in the ComEd service area. Many of the 117 customers currently taking service from an unaffiliated

RES are likely paying rates in excess of PPO and possibly in excess of 6L, and many of these customers probably wish they could return to PPO or 6L if they had the opportunity to do so. Moreover, Exelon's Market Development Program may be providing the appearance of a much more healthy competitive market than truly exists.

3. There are developments taking place that may cause a reduction rather than an increase in the number of competitive suppliers in the ComEd territory in the future, which does not comport with the concept of a robust competitive market.

4. The Federal Government has had absolutely no success in obtaining competitive bids from the robust market that is characterized by the Company. Not one contract has been awarded as a result of six competitive solicitation actions undertaken by DESC and GSA. This fact also does not comport with the Company's characterization of a vibrant, robust competitive market.

Q. WHAT WILL YOU RECOMMEND YOUR CLIENT DO IF THE COMMISSION DECLARES RATE 6L A COMPETITIVE SERVICE FOR CUSTOMERS WITH LOADS OF 3 MW OR MORE OR LETS THE COMPANY'S PETITION BECOME EFFECTIVE BY OPERATION OF LAW?

A. The DOE Fermi and Argonne laboratories require a high degree of certainty in their power costs to permit them to budget programmatic activity. The availability of Rate 6L provides that kind of certainty. If the Company's petition is granted, then I will recommend that DESC conduct another competitive solicitation for the two labs. Specifically, I will recommend that the Government ask for firm, fixed price bids for the net cost of power, including all delivery service charges and all CTC. In short, the RFP would require that the supplier carry the risk of changes in the CTC and delivery services charges. These bids, if any are received, would be compared to the cost of service under Rate 6L. If none of the bids provide guaranteed savings as compared to Rate 6L, then I will recommend that the two labs return to 6L service at least until June 1, 2005, and possibly through May 31, 2006. I am reasonably confident that no savings will be provided by any bidder, if anyone bids.

Q. DO YOU BELIEVE OTHER LARGE 6L CUSTOMERS WILL REACT IN THE SAME MANNER?

A. Yes. I believe the immediate result of a declaration of 6L service for customers with loads of 3 MW or greater as competitive will be a wholesale return to Rate 6L to take advantage of the grandfather period. In short, the first effect of the Company's proposal is likely to be a reduction in the amount of RES-supplied power and energy to this group of customers.

Q. WHAT DO YOU RECOMMEND TO THE COMMISSION?

A. Because of the increased uncertainty regarding the general economy and the condition of the power marketing industry, I believe there could be no worse time for the Commission to administratively declare an important service like Rate 6L to be competitive, which has the effect of eliminating it as a POLR service. If the Company is correct in its evaluation of the market, then all that will be accomplished by such a declaration is speeding up the movement to a completely open market where the Company does not have to reserve capacity to meet the potential loads under POLR services. More specifically, it will have the effect of freeing up capacity that will permit Exelon to sell more power into the competitive wholesale market. On the other hand, the potential adverse effects could be significant. The cost of power for the 373 affected customers could increase significantly. Many of these customers are likely to have electricity intensive processes, which is why they are such large customers. That means that the cost of electric power is likely to be of significance in their costs of operations. Further, these 373 customers are likely some of the largest employers in the area. Based on the Company's response to DOE 3-1, the 373 affected customers probably employ close to a quarter of a million people. What the Commission needs to ask itself before it accepts the Company's request, is whether the limited potential gains are worth risking the potential adverse effects at a time when the economy is shaky and the financial condition of electric power marketers is even more tenuous.

Given the lack of symmetry between the potential benefits and adverse impacts of such a declaration, I urge the Commission to reject the Company's petition. If conditions change, the Company would be able to resubmit its petition within six months

Q DOES THIS COMPLETE YOUR TESTIMONY?

A. Yes.

ATTACHMENT

COMMONWEALTH EDISON COMPANY	)	
	)	
	)	
Petition for declaration of service	)	
currently provided under Rate 6L to 3 MW	)	DOCKET NO. 02-0479
and greater customers as a competitive service	)	
pursuant to Section 16-113 of the Public Utilities	)	
Act and approval of related tariff amendments	)	

RESUME

OF

DR. DALE E. SWAN

DALE E. SWAN

Dr. Swan is a senior economist and principal at Exeter Associates, Inc. His areas of expertise include energy supply and demand analysis, electric industry restructuring, utility cost allocation and rate structure design, utility contract negotiation, antitrust policy, and public utility regulation.

Dr. Swan has given expert testimony in utility rate cases before the Federal Energy Regulatory Commission and before numerous state regulatory commissions. He has testified on marginal and embedded costing, rate structure design, long-term demand forecasting, short-term sales forecasts, the treatment of off-system sales, electric industry restructuring, and antitrust considerations. He has directed major projects for the U.S. Department of Energy, the U.S. Air Force, and the Rhode Island Public Utilities Commission on such issues as alternative power supply options and innovative rate structure experiments and implementation, and he has prepared and presented seminars and workshops on such issues as marginal costing, rate design, and interruptible rates for, among others, the National Regulatory Research Institute, the U.S. Department of Energy, and for state commission staffs in Maryland, Minnesota, and New Hampshire.

Dr. Swan has assisted federal agencies in the negotiation of electric power supply contracts and in the financial and locational assessment of transmission and generation projects; he has also prepared reports to several federal and state agencies on costing methods, rate design, the demand for electric power, PURPA requirements, bulk power supply planning, stranded cost recovery, standby rates, value-of-service pricing, the use of special contracts, and other issues. He has also acted as an Advisor to the Maine Public Utilities Commission in the restructuring proceedings for the three investor-owned Maine electric companies.

<u>Education</u>:

B.S. - (Business Administration) - Ithaca College, 1962.

M.A. Program in Economics - Tufts University, 1962-63.

Ph.D. - (Economics) - University of North Carolina at Chapel Hill, 1972.

<u>Previous Employment</u>:

1976-1980	-	Senior Economist, J.W. Wilson & Associates, Inc.
1974-1976	-	Associate Professor of Economics, Jacksonville State University

1974	-	Economist, Office of Energy Systems, Federal Energy Administration
1973	-	Staff Economist, Economics Department, Arabian-American Oil Company
1968-1973	-	Assistant and Associate Professor of Economics, Hampden-Sydney College
1969-1973	-	Visiting Assistant Professor of Economics, Randolph-Macon Womans College
1967-1968	-	Assistant Professor of Economics, Southern Methodist University
1966-1967	-	Visiting Assistant Professor of Economics, North Carolina Central University
1963-1964	-	Market Research Analyst, The Carter's Ink Company

Previous Professional Work:

At J.W. Wilson & Associates, Inc., Dr. Swan had primary responsibility for the development and direction of several of the firm's largest projects relating to the electric utility industry and costing and rate design issues in particular. Dr. Swan also had major responsibilities in the areas of cogeneration, antitrust, PURPA requirements, and technical assistance to state regulatory authorities under DOE grant programs.

At the Federal Energy Administration, Dr. Swan participated in the development of a National Energy Accounting System, similar to and compatible with the National Income and Product Accounts and the U.S. Input/Output Accounts. During his tenure at Jacksonville State University, Dr. Swan continued with this work as a consultant to the FEA.

While with ARAMCO, Dr. Swan prepared financial analyses of capital investment alternatives, developed cost trend estimates for price negotiations, and initiated the preparation of revised price trend factors to be used for budgeting purposes.

At Carter's Ink Company, Dr. Swan was responsible for conducting new product and new market research for the Director of Marketing, including consumer attitudinal studies on new product and packaging designs.

Dr. Swan has taught both graduate and undergraduate courses during his academic career. Among the courses he has taught are Microeconomic Theory, Industrial Organization, Economic History, International Trade, Economic Development, and Principles of Economics.

Selected Publications, Papers, and Reports:

"A Comparative Evaluation of Two Proposals to Meet the Long-Term Steam Requirements of the Savannah River Site." (Exeter Associates, Inc., for the U.S. Department of Energy, Federal Energy Management Program, November 2001.)

"Electric Power Supply Options to Meet the Cold Standby and Possible Restart Requirements of the Portsmouth Gaseous Diffusion Plant." (Exeter Associates, Inc. for the U.S. Department of Energy, Federal Energy Management Program, October 2001.)

"Strategic Options in Planning for the Long-Term Power Requirements of the DOE/OAK Laboratories." (Exeter Associates, Inc. for the U.S. Department of Energy, Office of Project and Fixed Asset Management, September 1998.)

"Utility Options Study: Rocky Flats Environmental Technology Site." (Exeter Associates, Inc. for the U.S. Department of Energy, Office of Project and Fixed Asset Management, March 1997.)

"Competitive Acquisition of Power by Federal Agencies: Current Possibilities and Future Prospects." (Presented before the Competitive Power Congress, Philadelphia, Pennsylvania, July 21, 1995.)

"Standby Rate Rulemaking: A Discussion of Issues and Proposed Positions." (Exeter Associates, Inc. for the Maine Public Utilities Commission, January 10, 1995.)

"Stranded Cost Rulemaking: A Discussion of Issues and Proposed Positions." (Exeter Associates, Inc. for the Maine Public Utilities Commission, January 3, 1995.)

"Superconducting Super Collider Permanent Power Supply: A Preliminary Consideration of Supply Alternatives." (Exeter Associates, Inc., revised draft report prepared for the U.S. Department of Energy, Office of Organization, Resources and Facilities Management, March 1992.)

"The Potential Savings Associated with Exporting EBR-II Energy from the Idaho National Engineering Laboratory to Another Federal Facility." (Exeter Associates, Inc. for the U.S. Department of Energy, Office of Project and Facilities Management, March 1991.)

"Planning and Preparing a Utilities Options Study," in Utilities Planning and Management for Department of Energy Facilities. (U.S. Department of Energy, February 1990.)

"An Evaluation of the Financial Benefits to the United States Government from Using $175 Million of the TRNLC Fund to Purchase Generating Capacity to Reduce Power Costs of the Superconducting Super Collider." (Exeter Associates, Inc. for the U.S. Department of Energy, Office of Project and Facilities Management, January 1990.)

"Power Supply Arrangements at Brookhaven National Laboratory." (Exeter Associates, Inc. for the U.S. Department of Energy, Office of Project and Facilities Management, October 1989.)

"Electric Power Supply Options for the Continuous Electron Beam Accelerator Facility." (Exeter Associates, Inc. for the U.S. Department of Energy, Office of Project and Facilities Management, July 1989.)

"The Potential Future Value of Byproduct Steam from a New Production Reactor Based on Four Alternative Technologies and Three Alternative Sites," with Steven Estomin and Richard Galligan. (Exeter Associates, Inc. for the U.S. Department of Energy, August 1988.)

"An Analysis of the Optimal Allocation of Available Western Area Power Administrative Preference Power Among Three Northern California Laboratories," with Charles E. Johnson. (Exeter Associates Inc. for DOE San Francisco Operations Office, March 1986.)

"Report on the Role of Special Contracts in Electric and Gas Utility Ratemaking." (Exeter Associates, Inc. for the U.S. Postal Service, February 1984.)

"The Electric Utility Industry," in Study of Pricing Precedents in the Public Utility Industry. (Exeter Associates, Inc., for the U.S. Postal Service, February 1984.)

"State Regulatory Attitudes Toward Fuel Expense Issues," with Matthew I. Kahal, Report to the Electric Power Research Institute, June 1983.

"A Summary and Analysis of Federal Legislation Affecting Electric and Gas Utility Diversification." (Exeter Associates, Inc. for Argonne National Laboratory, August 1981.)

"Average Embedded Cost Studies as the Basis for Rate Designs Consistent with the Goals of the Public Utility Regulatory Policies Act of 1978," prepared for ORI, Inc. and the DOE Office of Utility Systems, February 6, 1981.

"Analysis of the Major Comments Made on the ERA Proposed Voluntary Guideline for the Cost-of-Service Standard Under the Public Utility Regulatory Policies Act of 1978," prepared for ORI, Inc. and the DOE Office of Utility Systems, February 1981.

"The Rhode Island - DOE Electric Utilities Demonstration Project." Final Report - November 1980, and three Interim Reports in July 1978, November 1979, and July 1980. (J.W. Wilson & Associates, Inc. for the Rhode Island Division of Public Utilities and Carriers.)

"An Evaluation of Power Supply Planning by the Six Investor-Owned Electric Utilities in South Dakota," with Ralph E. Miller. (J.W. Wilson & Associates, Inc. for the South Dakota Public Utilities Commission, 1977.)

<u>The Structure and Profitability of the Antebellum Rice Industry: 1859</u>. (New York: Arno Press, 1975.)

"The Structure and Profitability of the Antebellum Rice Industry: 1859." <u>Journal of Economic History</u>, (December 1972.)

"The Productivity and Profitability of Antebellum Slave Labor: A Micro Approach," with James D. Foust. <u>Agricultural History</u>, (January 1970). Later published in William N. Parker (ed.), <u>The Structure of the Cotton Economy of the Antebellum South</u>. (New York: Agriculture History Society, 1970.)

<u>Participation in Conferences, Seminars and Workshops</u>:

Competitive Power Congress, 1995.

Department of Energy Utility Conferences, 1985, 1986, 1990, 1992, 1995, 1996, 1997.

DOD/DOE Combined Utility Planning Conference, March 1987.

American Historical Association Meetings, 1981.

National Regulatory Research Institute Workshop on Time-of-Use Rates, September 1979.

National Regulatory Research Institute State Needs Assessment Conference, August 1979.

Southern Economic Association Meetings, 1969, 1972, 1975.

Economic History Association Meetings, 1972.

Expert Testimony

Presented by Dale E. Swan

1. Before the Public Utilities Commission of the State of Ohio, Case No. 78-676-EL-AIR, on marginal costs and electric rate structure design.

2. Before the Public Utilities Commission of the State of South Dakota, Docket No. 3362, on marginal costs and electric rate structure design.

3. Before the Public Utilities Commission of the State of South Dakota, Docket Nos. F-3240 and F-3241, on electric rate structure design.

4. Before the Public Utilities Commission of the State of Rhode Island, Docket No. 1311, on the design of a proposed inverted rate structure experiment.

5. Before the Public Utilities Commission of the State of Rhode Island, Docket No. 1262, on the operation and the results of a time-of-day rate experiment.

6. Before the Public Utilities Commission of the State of South Dakota, Docket No. F-3116, on test year sales forecasts.

7. Before the Public Utilities Commission of the State of Montana, Docket No. 6441, on test year sales forecasts.

8. Before the Public Service Commission of the State of Maryland, Case No. 6807, on long-term demand forecasting methodology.

9. Before the Public Service Commission of the State of New York, Docket No. 27136, on test year sales forecasts and economic impact.

10. Before the Federal Energy Regulatory Commission, Docket No. ER77-530, on retail competition in the Ohio electric power market.

11. Before the Public Service Commission of the State of Maryland, Case No. 7441 (Phase III), on electric rate structure design and PURPA ratemaking standards.

12. Before the Public Utilities Commission of the State of Rhode Island, Docket No. 1591, on class revenue requirements and electric rate structure design.

13. Before the Public Utilities Commission of the State of Rhode Island, Docket No. 1606, on PURPA Section 111 standards, class cost-of-service, and rate structure design.

14. Before the Public Utilities Commission of the State of Rhode Island, Docket No. 1605, on class revenue requirements and electric rate structure design.

15. Before the Public Utilities Commission of the State of Idaho, Case No. U-1006-185, on class revenue requirements and rate design.

16. Before the Illinois Commerce Commission, Docket No. 82-0026, on marginal-cost-based class revenue responsibilities and rate design.

17. Before the Public Utilities Commission of the State of Idaho, Case No.. U-1009-120, on contractual arrangements, embedded-cost-based class revenue requirements, and rate design.

18. Before the Public Utilities Commission of the State of Maryland, Case No. 7695, on proper electric class cost-of-service methodologies.

19. Before the Public Service Commission of Nevada, Docket No. 83-707, on marginal-cost-based class revenue responsibilities and rate design.

20. Before the Illinois Commerce Commission, Docket No. 83-0537, on marginal-cost-based class revenue responsibilities, rate design, and rate schedule qualification standards.

21. Before the Public Utilities Commission of the State of Idaho, Case No. U-1009-137, on jurisdictional separations, embedded class cost-of-service studies, interruptible service credits, and class revenue requirements.

22. Before the South Carolina Public Service Commission, Docket No. 84-122-E, on embedded class cost-of-service methodologies, class revenue requirements, and rate design.

23. Before the Public Utilities Commission of the State of Idaho, Case No. U-1500-157 (May 1985), on the public interest aspects of declaring one utility as the sole supplier of the Idaho National Engineering Laboratory.

24. Before the Illinois Commerce Commission, Docket Nos. 83-0537 (Step 2) and 84-0555 (Consolidated), June 1985, on marginal-cost-based class revenue responsibilities and rate design.

25. Before the Public Utilities Commission of the State of Idaho. Case No. U-1006-265A (May 1987), on embedded class cost-of-service studies, class revenue requirements, and rate design.

26. Before the Public Utilities Commission of the State of Maine, Docket No. 86-242 (August 1987), on by-pass and incentive rate discounts for large industrial customers.

27. Before the Illinois Commerce Commission, Docket No. 87-0427, (February and April 1988), on marginal-cost-based class revenues, Ramsey pricing considerations, and industrial rate design.

28. Before the Illinois Commerce Commission, Docket No. 87-0695, (April 1988), on marginal-cost-based class revenues, Ramsey pricing issues, and industrial rate design.

29. Before the Indiana Utility Regulatory Commission, Cause No. 37414-S2 (October 1989), on ratemaking treatment of off-system sales, embedded cost-of-service study, and rate design.

30. Before the Public Utilities Commission of the State of Maine, Docket 89-68 (January 1990), on measurement and use of marginal costs for determining class revenues.

31. Before the Federal Energy Regulatory Commission, Docket No. EC90-10-000, et. al. (May 1990), with Matthew I. Kahal, on the potential effects of the Northeast Utilities acquisition of Public Service New Hampshire on market concentration and competition in the New England bulk power market.

32. Before the Illinois Commerce Commission, Docket No. 90-0169 (August and October 1990), on the estimation of marginal costs, class revenue responsibilities, and industrial rate design.

33. Before the Public Service Commission of Nevada, Docket Nos. 91-5032 and 91-5055 (September 1991), on the estimation of marginal costs, class revenue responsibilities and rate design for large power users.

34. Before the Public Service Commission of Nevada, Docket No. 92-1067 (May 1992), on the estimation of marginal costs, the cost of providing interruptible power, class revenue responsibilities, and rate design for large power users.

35. Before the Public Utilities Commission of the State of Maine, Docket No. 92-095 (February 1993), Affidavit regarding the efficacy of rate discounts in attracting new business.

36. Before the Public Utilities Commission of the State of Maine, Docket No. 92-315 (June 1993), on revamping of the rate structure to meet competition for sales.

37. Before the Public Utilities Commission of the State of Maine, Docket No. 92-345 (August 1993), with Marvin H. Kahn, on price cap mechanisms as an alternative form of regulation.

38. Before the Public Service Commission of Nevada, Docket No. 92-9055 (October 1993), on franchise rights to serve a large DOE customer.

39. Before the Illinois Commerce Commission, Docket No. 94-0065 (June 1994), on the estimation of marginal costs, class revenue responsibilities, and industrial rate design.

40. Before the Public Service Commission of Nevada, Docket No. 93-11045 (June 1994) on the estimation of marginal costs, environmental externality adders, competition for loads, and class revenue responsibilities.

41. Before the Idaho Public Utilities Commission, Case No. IPC-E-94-5 (November 1994), on embedded class cost allocation and class revenue responsibilities.

42. Before the Public Utilities Commission of the State of Maine, Docket No. 92-315 (II) (March 1995), on the estimation of marginal distribution demand and customer costs.

43. Before the Public Utilities Commission of the State of Maine, Docket No. 95-052 (RD) (October 1995 and January 1996), with Daphne Pscharopoulos, on the estimation of marginal costs as the basis for class revenues and rate design.

44. Before the Public Service Commission of Nevada, Docket No. 96-7020 (November 1996), on the estimation of marginal costs, class revenue responsibilities, and the reasonableness of fixed, up-front facilities charges.

45. Before the Public Service Commission of Montana, Docket No. 97.7.90 (November 1997 and March 1998), on aspects of Montana Power Company's proposed restructuring plan.

46. Before the Illinois Commerce Commission, Docket No. 99-0117 (April 1999), on the design of distribution delivery rates for Commonwealth Edison Company.

47. Before the Public Utilities Commission of Nevada, Docket Nos. 99-4005 and 99-4006, (November 1999), on the design of an electric distribution service tariff for Nevada Power Company.

48. Before the Public Utilities Commission of Nevada, Docket No. 99-7035 (January and February 2000), on Nevada Power proposed revision to its base rates and deferred energy adjustment rates, including the recovery and allocation of deferred capacity costs and the appropriate calculation of annualized fuel and purchased power costs.

49. Before the Illinois Commerce Commission, Docket No. 01-0423 (August, October 2001), on the proper design of distribution delivery rates for Commonwealth Edison Company.

50. Before the Public Utilities Commission of the State of Maine, Docket No. 2001-239 (November 2001), on appropriate procedures governing the provision of rate discounts to retain or attract customers.

DOE Exhibit 2.0

ATTACHMENT

COMMONWEALTH EDISON COMPANY	)	
	)	
	)	
Petition for declaration of service	)	
currently provided under Rate 6L to 3 MW	)	DOCKET NO. 02-0479
and greater customers as a competitive service	)	
pursuant to Section 16-113 of the Public Utilities	)	
Act and approval of related tariff amendments	)	

DECLARATION

OF

LAWRENCE T. FRATIS

DECLARATION OF LAWRENCE T. FRATIS

1. My name is Lawrence T. Fratis. I am a Contracting Officer at the Defense Energy Support Center (DESC) which is part of the U.S. Department of Defense. DESC has the responsibility of purchasing natural gas for the Department of Defense and other federal activities and also is charged with competitively procuring electricity for Department of Defense and other federal activities in those retail jurisdictions where retail open access is provided. DESC has issued competitive solicitations for electricity in numerous states, which have led to awards in California, Pennsylvania, New Jersey, Maryland, Maine, Texas and the District of Columbia. As a result of its solicitations, DESC has awarded electricity supply contracts with a value of approximately $230 million in the PJM states and $71 million in Texas.

2. DESC has conducted four separate solicitations for federal facilities in the service area of Commonwealth Edison Company (ComEd) since retail open access was initiated for certain large customers in October 1999. We received no offers from ICC certified suppliers in response to Solicitation SP0600-99-R-0092; 2 offers from ICC certified suppliers in response to Solicitation SP0600-00-R-0081; no offers in response to Solicitation SP0600-01-R-0037; and 1 offer from an ICC certified supplier in response to Solicitation SP0600-02-R-0038. In every case except one, the cost of obtaining electricity under these offers exceeded the costs of service under ComEd's PPO and its Rate 6L. One offeror

under Solicitation SP0600-00-R-0081 did submit a price lower than Rate 6L, however this offer was above the applicable PPO. Consequently, DESC has been unable to award a single contract to any alternate supplier to meet the loads of any federal facility in ComEd's service area since retail open access began in October 1999.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 8/27/02 **.**

Lawrence T. Fratis
Contracting Officer
Electricity Branch
Installation Energy